



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Environmental Tectonics Corporation  
B-224104.2  
File:  
Date: November 17, 1986

### DIGEST

1. An agency reasonably may determine that a compelling reason exists for canceling a brand name or equal invitation for bids after opening where the invitation fails to include five salient characteristics that the agency subsequently determines are required to meet its needs.
2. When the General Accounting Office finds that an agency had a compelling reason for canceling a solicitation, and the protester will be able to compete under a resolicitation, the protester is not entitled to bid preparation costs or the costs of pursuing the protest. These are only available when the agency has unreasonably excluded the protester from the procurement and other remedies are not available.

### DECISION

Environmental Tectonics Corporation protests the cancellation after bid opening of invitation for bids (IFB) No. F02604-86-BA006, issued May 9, 1986, by Luke Air Force Base, Arizona. The agency sought an ethylene oxide sterilizer on a brand name or equal basis. The Air Force states that after making an award to American Sterilizer Company, the manufacturer of the brand name equipment, it discovered that the specifications failed to include several salient characteristics; it therefore terminated the contract before performance had begun. Environmental contends that the cancellation was improper and requests that the solicitation be reinstated and the contract awarded to it as the low responsive bidder. Alternatively, the firm seeks reimbursement of its bid preparation costs and the costs of pursuing the protest.

We deny the protest.

The IFB contained a brand name or equal purchase description and required a bidder offering an equal product to identify it and to provide descriptive material with the bid that was

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sufficient to permit the government to determine if the product met the salient characteristics of the brand name product. The Air Force received three bids by the June 11, 1986, opening date, and rejected both the low bidder and Environmental, the second-low bidder, as nonresponsive. The Air Force advised Environmental by letter dated August 18 that the descriptive literature provided failed adequately to describe the "dimensional, water/steam consumption rates, blower specifications, etc. for the purposes of evaluating the acceptability of the item offered in comparison with the item requested." On the same date, the agency awarded a \$29,093.18 contract to American Sterilizer.

Environmental then protested to our Office, contending that its bid met all the stated salient characteristics. Upon review of the protest, the agency determined that it had erroneously rejected Environmental's bid for failing to meet certain characteristics that were not listed in the IFB. While the agency contends that the contracting officer's post-protest analysis revealed that the protester's bid actually was nonresponsive in that it did not meet stated salient characteristics, the agency further states that when these characteristics alone were considered, none of the bids was responsive.

The agency therefore terminated American Sterilizer's contract for the convenience of the government. The Air Force states that it plans to resolicit, adding several salient characteristics that are essential to the needs of the government and deleting one portion of the requirement because equipment currently on hand can be used with the new sterilizer.

Contracting officials have broad discretion in determining whether a solicitation should be canceled and the requirement reprocured. Power Equipment Inc., B-213428.3, Oct. 22, 1984, 84-2 CPD ¶ 427. Due, however, to the potential adverse impact on the competitive bidding system of canceling an invitation after bid prices have been exposed, contracting officers, in the exercise of their discretionary authority, must find that a compelling reason exists for the cancellation. Commercial Envelope Mfg., Inc., B-213272, Feb. 15, 1984, 84-1 CPD ¶ 206.

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(1) (1985), provides for rejection of all bids and cancellation of solicitations when specifications are inadequate or ambiguous. Here, the record indicates that the Air Force requires five additional features that were not

stated in the IFB; these include a maintenance source that is located within a 4-hour response time from Luke Air Force Base and a nickel clad interior, rather than stainless steel, to prevent corrosion from the hard water found in the Luke Air Force Base area. The protester, in its comments on the agency report, has not shown that these changes are other than significant. We have held that a compelling reason exists for canceling an invitation where an award under it would not serve the government's actual needs. Summerville Ambulance, Inc., B-179049, July 1, 1985, 85-2 CPD ¶ 4.

We therefore conclude that the agency did have a compelling reason to cancel the solicitation. It is unfortunate that the agency did not discover the need for the additional features in time to amend the solicitation before bid opening. However, this does not preclude cancellation after opening, since the solicitation proved inadequate. Ridg-U-Rak, Inc.--Reconsideration, B-207124.2, Sept. 24, 1982, 82-2 CPD ¶ 272. In view of this conclusion, we need not decide whether Environmental met the salient characteristics stated in the original IFB. Finally, because we deny the protest, Environmental is not entitled to its bid preparation costs or the cost of pursuing the protest. These are only available where the agency has unreasonably excluded a protester from the procurement and other remedies are not available. 4 C.F.R. § 21.6(d) (1986); Koehring Company, Speedstar Division, 65 Comp. Gen. 268 (1986), 36-1 CPD ¶ 135.

The protest is denied.

*for* *Simon Efron*  
Harry R. Van Cleve  
General Counsel